

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL RENE GARRETT,

Defendant-Appellant.

UNPUBLISHED

February 1, 2007

No. 265913

Wayne Circuit Court

LC No. 05-002715-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of kidnapping, MCL 750.349.¹ Defendant was sentenced to 28 to 60 years in prison. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

Defendant argues on appeal that, because of inconsistencies in the complainant's testimony, the verdict was contrary to the great weight of the evidence. We disagree. This Court reviews an unpreserved claim that a jury verdict is contrary to the great weight of evidence for plain error that affected defendant's substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Reversal is warranted only if a plain error resulted in a conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

To determine whether a verdict is contrary to the great weight of the evidence, this Court reviews the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled on other grounds *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Lemmon*, *supra* at 642-643. The issue usually involves matters of credibility or circumstantial evidence. *Id.* at 642-643. "[A]bsent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally guaranteed jury determination thereof.'" *Id.* (citation omitted).

¹ Defendant was acquitted of assault with intent to murder, MCL 750.83.

Michigan's kidnapping statute defines several different forms of kidnapping. See MCL 750.349. A person is guilty of common-law kidnapping if he or she (1) willfully, maliciously and without lawful authority, (2) forcibly, (3) asports a victim, (4) across the state boundary. *People v Wesley*, 421 Mich 375, 388; 365 NW2d 692 (1984); see also MCL 750.349(1)(d).²

Defendant points out that the complainant gave two different statements regarding where the kidnapping began and the location where defendant started beating her. Further, defendant contends that the severity of the victim's injuries was not consistent with her version of events.³ He argues that these inconsistencies severely call into doubt the complainant's credibility. However, as defendant himself acknowledges, questions of witness credibility are generally not grounds for a new trial, and the trial court should generally refrain from substituting its own judgments of witness credibility for those of the jury. *Lemmon*, *supra* at 643, 646-647. For instance, although the defendant and the victims in *Lemmon* gave "diametrically opposed" testimony, our Supreme Court declined to usurp the role of the jury in determining the weight of the evidence and the credibility of the witnesses. *Id.* at 646-647.

In this case, there was no diametrically opposed testimony. Rather, there was slightly inconsistent testimony regarding two minor details of the crime. The Court in *Lemmon* gave examples of the types of exceptional circumstances where evidence might preponderate heavily against a verdict. For instance, evidence might preponderate heavily against a verdict if it "contradicts indisputable facts or laws," if a witness's testimony "is so inherently implausible it could not be believed by a reasonable juror," or if the testimony "has been seriously 'impeached' and the case [is] marked by 'uncertainties and discrepancies.'" *Lemmon*, *supra* at 643-644 (citations omitted). The inconsistencies in this case do not rise to the level of the "exceptional circumstances" described in *Lemmon*. The jury properly exercised its important function in evaluating the complainant's credibility, and evidently choose to credit her testimony despite its minor inconsistencies. Viewing the proofs as a whole, we conclude that the evidence does not preponderate against the verdict. Defendant has shown no plain error with respect to the validity of the jury verdict in this case.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper

² The form of kidnapping proscribed by the current MCL 750.349(1)(d)—kidnapping by restraining a person with the intent to transport him or her across the state boundary—is similar to the historical "common-law kidnapping," which was proscribed by the former MCL 750.349 and was described in *Wesley*, *supra* at 388. Although the kidnapping statute was amended by 2006 PA 159, the section proscribing kidnapping by transporting a person across the state boundary remains substantially unchanged.

³ Defendant offers no support for this argument except the assertion that, if the victim's version of events were true, it is "quite obvious" that she would have had suffered more serious and permanent injuries.